prescribed legitimate qualifications for those who wished to practise certain professions, and did not impose a new penalty for a past crime. There is good ground for contending that the dissenters in those cases took the correct view. And in the New York case, where the qualification required was much more intimately connected with fitness for the profession, there can be small doubt but that a correct result was reached.

It may perhaps be questioned whether the laws involved in any of these cases are any more open to the objection of being *ex post facto* when applied to a person at the time practising one of the forbidden professions, than they are when applied to one not yet in practice. Though this distinction is taken by Pomeroy (Constitutional Law, §§ 530–533), who supports the actual decisions in the Test Oath cases, while disagreeing with much that was said by Mr. Justice Field in the course of his opinion. The whole question would seem to be whether the law is in substance the infliction of an additional punishment for a past offence, or a *bona fide* regulation of a calling in which the public has a deep interest. If the latter, it seems clear from *Dent* v. *West Virginia*, 129 U. S. 114, that it is valid as to existing practitioners, as well as other persons.

The Right to Compel Testimony in Legislative Investigations. — The power of a legislative body to punish for contempt is so clearly a judicial power, that any considerable exercise of it naturally arouses a suspicion in the popular mind that some usurpation of judicial functions is being attempted. The courts, also, while recognizing the necessity for the existence of such a power, claim the right to restrain the use of it. Even an order of the House of Commons is subject to review in the courts, since the famous case of *Stockdale* v. *Hansard*, 9 A. & E. 1. In this country, where National and State Constitutions strictly separate the judicial from the legislative department, and for the most part expressly define the powers of each branch of the government, the limitations of the power of a legislative body to punish for contempt are more evident.

The question as to which the greatest difficulty is likely to arise in these times concerns the extent to which legislatures may compel witnesses to testify before investigating committees. This is the point raised in the recently decided case, *In re Chapman, Petitioner*, in which, as appears from the advance sheets of the opinion, the Supreme Court of the United States finally refuses to interfere with a sentence condemning the petitioner to imprisonment for violation of a statute providing for the punishment of persons refusing to testify before either House of Congress, or any committee of either House. The facts of this case are generally known; the prisoner's offence, in brief, consisted in refusing to answer certain questions put to him by a committee of the Senate, appointed to investigate charges of serious misconduct on the part of members of that House. The court holds that the Senate had the right to conduct such an investigation, under its express constitutional power to try and expel its own members for misconduct, and that the questions asked were relevant to the subject of the investigation. The reasoning of the court is so clear and simple, that it is difficult to see why any one could have honestly felt any doubt on the matter. The argument for the petitioner went principally on the ground that he had a right to refuse to disclose his private business affairs. But if the investigation was a proper pro-

ceeding, and the question relevant to the matter in hand, it does not appear why a witness should be allowed any more extensive privileges than if he were in a court of law.

In what classes of investigation a legislative body has the power to compel testimony is a difficult question. It must be confined to investigation conducted for the purpose of aiding a branch of the legislature in the performance of its constitutional functions. *Kilbourn* v. *Thompson*, 103 U. S. 168. In the present case, however, it is reasonably apparent that the investigation was undertaken to enable the Senate to take measures for the censure or expulsion of certain of its members, if it should see fit to do so, under its express constitutional power. Whether an inquiry for the purpose of obtaining information to assist the legislators in framing laws would be considered by the courts as equally within the constitutional powers of the Houses of Congress has never been decided. In New York, however, such investigations by a branch of the legislature have been upheld. *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463.

In the case of *In re Chapman*, the obstinate witness, it will be observed, was not punished directly by the Senate for contempt, but convicted by the courts under a general statute providing for the punishment of such offences as misdemeanors. If the Houses have the power to compel persons to give testimony, it does not appear how there can be any objection to the constitutionality of a statute enacted to aid them in the exercise of that power; and the only reasonable construction of such a statute is that it was intended to apply solely to those who refuse to answer questions properly asked of them in the course of a lawful proceeding. The possibility that one of the Houses might institute such an investigation for unjustifiable purposes is no reason why they should not be given every aid towards the efficient prosecution of their investigations, so long as the propriety of such proceedings in any instance is subject to the judgment of the courts.

Prospective Damages. — In a recent case in Ohio, *Wolf* v. *Cincinnati Edison Electric Co.*, Ohio Legal News, March 27, 1897, the trial court allowed prospective damages for the depreciation in value of the plaintiff's land, due to a nuisance arising from the operation of an electric plant belonging to the defendant. Upon reviewing the case, the Court of Common Pleas refused to allow these damages, owing to a defect in the pleadings; but the court agreed to admit them if the plaintiff would amend his pleadings by treating the nuisance as if it were permanent, and would agree to waive his claim to damages in future actions upon the continuance of the nuisance.

The general rule in this class of cases, where the injury comes not from a single act but from the continuance of certain acts, is that prospective damages are allowed only when the nuisance is by its nature permanent. They cannot be recovered if the cause of the injury may be abated. It is only when harm is done by a strictly permanent structure that the damage can be looked upon as coexistent with the structure which causes it. In the present case the court extends this doctrine: if the plaintiff elects to treat a nuisance which is likely to continue in the future as permament, he can recover prospective damages. Undoubtedly reliance is placed upon the analogy of certain railroad cases, where it is held that a railroad causing injury by a